

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DEAN ERVIN PHILLIPS,

Plaintiff,

V.

STATE OF WASHINGTON, et al.,

Defendants.

CASE NO. 21-5454 RJB

ORDER GRANTING MOTIONS TO DISMISS

This matter comes before the Court on Defendant City of Centralia, Stacey Denham,ia Finch, and Timothy O'Dell's Motion to Dismiss (Dkt. 15) and Defendant State ofington, Judge James Lawler, Prosecuting Attorney Jonathan Meyer and Angela Avery'son to Dismiss (Dkt. 18). The Court has considered the pleadings filed regarding thens and the remainder of the file herein.

I. FACTS AND PROCEDURAL HISTORY

On June 23, 2021, Plaintiff filed a complaint against the State of Washington, a superior judge and two Lewis County, Washington prosecuting attorneys, the City of Centralia, and police officers in connection with his arrest and imprisonment. Dkt. 1. In addition to

1 asserting that his arrest and the filing of criminal charges against him were illegal, he alleges that
 2 while in custody, he did not receive proper care for his diabetes. *Id.* He asserts multiple
 3 constitutional claims and two federal criminal statutes – 18 U.S.C. § 241 and 18 U.S.C. § 1951.
 4 *Id.* The complaint seeks injunctive relief only to be “left alone,” not be “placed in a cage,” and
 5 for an order prohibiting the criminal case against him. *Id.*

6 The Plaintiff’s motion for injunction to “stop all efforts to arrest, detain, and/or harass”
 7 the Plaintiff was denied (Dkt. 12) as was his motion for reconsideration of the order denying that
 8 motion (Dkt. 14).

9 The Defendants filed their motions to dismiss on July 12, 2021 (Dkt. 15) and on July 14,
 10 2021 (Dkt. 18). The Plaintiff was given notices regarding the motions to dismiss and what he
 11 needed to do if he intended to respond. Dkts. 16 and 19. The motions to dismiss were noted for
 12 consideration on August 6, 2021. Dkts. 15 and 18. The Plaintiff did not timely respond to the
 13 motions, but on August 8, 2021, filed a response. Dkt. 24. In the interest of due process, the
 14 Court will consider the Plaintiff’s response. The Defendants filed replies (Dkts. 22 and 23) and
 15 the motions are ripe for decision.

16 II. DISCUSSION

17 A. MOTION TO DISMISS FOR LACK OF JURISDICTION

18 1. STANDARD

19 A complaint must be dismissed under Fed. R. Civ. P. 12(b)(1) if, considering the factual
 20 allegations in the light most favorable to the plaintiff, the action: (1) does not arise under the
 21 Constitution, laws, or treaties of the United States, or does not fall within one of the other
 22 enumerated categories of Article III, Section 2, of the Constitution; (2) is not a case or
 23 controversy within the meaning of the Constitution; or (3) is not one described by any

1 jurisdictional statute. *Baker v. Carr*, 369 U.S. 186, 198 (1962); *D.G. Rung Indus., Inc. v.*
 2 *Tinnerman*, 626 F.Supp. 1062, 1063 (W.D. Wash. 1986); *see* 28 U.S.C. §§ 1331 (federal
 3 question jurisdiction) and 1346 (United States as a defendant).

4 The Plaintiff asserts that this Court has jurisdiction based on the diverse citizenship of the
 5 parties, under 28 U.S.C. § 1332, and based on the federal questions presented, under 28 U.S.C. §
 6 1331. He has asserted claims under both federal statutes and under the U.S. Constitution.
 7 Accordingly, the Court has federal question jurisdiction and the Court need not address the
 8 Defendants' claims that the Plaintiff has not shown the Court has diversity jurisdiction.

9 **B. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

10 1. STANDARD

11 Fed. R. Civ. P. 12(b)(6) motions to dismiss may be based on either the lack of a
 12 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.
 13 *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations
 14 are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*,
 15 717 F.2d 1295 (9th Cir. 1983). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss
 16 does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his
 17 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the
 18 elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-55
 19 (2007) (internal citations omitted). "Factual allegations must be enough to raise a right to relief
 20 above the speculative level, on the assumption that all the allegations in the complaint are true
 21 (even if doubtful in fact)." *Id.* at 555. The complaint must allege "enough facts to state a claim
 22 to relief that is plausible on its face." *Id.* at 547.

23 2. CLAIMS FOR RELIEF

1 The Plaintiff makes claims pursuant to two criminal federal statutes: 18 U.S.C. § 241 and
 2 18 U.S.C. § 1951, and for violations of the U.S. Constitution: Article 1, Sec. 8, Clause 17 for
 3 “lack of territorial jurisdiction,” Art. 3. Sec. 2, Clause 2 for “lack of original jurisdiction,” First
 4 Amendment “in regards to expression of religion and speech,” Fourth Amendment for
 5 “unreasonable seizure of property and insufficient/no warrant,” Fifth Amendment “in regards to
 6 lack of indictment by Grand Jury and lack of due process,” Sixth Amendment “in regards to lack
 7 of being informed as to the nature and cause and due to an inability to face one’s accuser,”
 8 Eighth Amendment for “excessive bail and cruel and unusual punishment” and Eleventh
 9 Amendment “in regards to lack of jurisdiction of subjects of a foreign state.” Dkt. 1. He seeks
 10 only injunctive relief: “to be left alone, . . . to have this nightmare ended, . . . to avoid being put
 11 in a cage against [his] will.” *Id.*, at 5. The Plaintiff states that he “require[s] this court to place
 12 an injunction on the Superior Court in Lewis County prohibiting that court from moving forward
 13 on the case number 21-1-00277-21.” *Id.*

14 The Defendants argue that this Court should abstain from retaining jurisdiction over this case
 15 based on *Younger v. Harris*, 401 U.S. 37 (1971) because of the ongoing criminal case against the
 16 Plaintiff. Dkts. 15 and 18.

17 Absent exceptional circumstances, federal courts should not enjoin pending state criminal
 18 proceedings. *Younger v. Harris*, 401 U.S. 37 (1971). A federal court should abstain from
 19 exercising jurisdiction over a case under *Younger* when: “(1) there is an ongoing state judicial
 20 proceeding; (2) the proceeding implicates important state interests; (3) there is an adequate
 21 opportunity in the state proceedings to raise constitutional challenges; and (4) the requested relief
 22 seeks to enjoin or has the practical effect of enjoining the ongoing state judicial proceeding.”

23 *Arevalo v. Hennessy*, 882 F.3d 763, 765 (9th Cir. 2018)(internal quotation marks and citations
 24

1 *omitted*). Where all the *Younger* abstention elements are met, a district court must abstain from
2 hearing the case and dismiss the action. *Beltran v. State of Cal.*, 871 F.2d 777, 782 (9th Cir.
3 1988).

4 The Defendants' motion to dismiss should be granted and the case should be dismissed.
5 All the *Younger* abstention elements are met. There is an ongoing criminal proceeding against
6 the Plaintiff and the criminal proceeding implicates important state interests- that of the state
7 enforcing its' criminal statutes. There is no showing that the Plaintiff cannot raise these
8 constitutional issues during the state court proceedings. Further, the Plaintiff's only requested
9 relief is to enjoin the ongoing state criminal proceedings. The Plaintiff's response fails to offer
10 any grounds for the Court to retain jurisdiction. This case should be dismissed.

11 **IT IS SO ORDERED.**

12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
13 to any party appearing *pro se* at said party's last known address.

14 Dated this 9th day of August, 2021.

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17 ROBERT J. BRYAN
18 United States District Judge
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